
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
	:	
Approval of Energy Efficiency and Demand	:	Docket No. 07-0540
Response Plan Pursuant to Section 12-103(f)	:	
Of the Public Utilities Act	:	

OPENING BRIEF
OF THE
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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Dated: January 14, 2008

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I. INTRODUCTION

This proceeding marks a seminal event in the electric power industry in Illinois – a return to utility administered energy efficiency programs. Similar “demand-side management” programs were discontinued over a decade ago in anticipation of electric industry restructuring. Since the time when these programs were previously implemented, the market and electric power industry has changed dramatically. For example, Illinois utilities are now integrated distribution companies, and ComEd’s market structure has bifurcated large customers, with no economic default service from the utility, and residential/small commercial customers, with procurement services provided by the utility and in the future from the Illinois Power Agency with no foreseeable open-access opportunity. The advent of Regional Transmission Organizations and innovation in wholesale market designs have introduced a plethora of new demand response opportunities for customers as these markets have become more sophisticated. Finally, wholesale market prices have increased dramatically in response to natural gas becoming the marginal fuel for generation units during many hours of the year coupled with the drastic increase in natural gas prices. Clearly, energy efficiency programs cannot be implanted in the same manner as they were in the 1980-90s without the collaboration with now more sophisticated customers.

The Building Owners and Managers Association of Chicago (“BOMA/Chicago”) has three distinct requests for the Commission to rule in this proceeding:

- The per kilowatt-hour (kWh) surcharge must be calculated in accordance with the plain meaning of the legislation, and should be applied on a delivery class basis;

- Customers must have free access to their own usage information, particularly interval data and ENERGYSTAR® data, as integral inputs for customer energy efficiency and demand response program participation;
- The Commission must establish a formal collaborative process for the ongoing implementation of energy efficiency and demand response programs.

Given the legislative mandate of full-cost recovery for the utility, customer groups who will be paying for energy efficiency, without a guarantee for “cost recovery” of their contributions to this initiative must, at a minimum, be allowed to be an active participant for implementation of programs, lest we return to a fully regulated scenario for all customers. The Commission must require that customers play an important role in the energy efficient marketplace other than to be an open checkbook and have programs dictated to them. These programs will be more effective and efficient if the input of customers is received on a systematic and regular basis with their opinions about program design entering into the process. The Commission must also realize that some energy efficiency products can be provided to some or all customer groups more efficiently from the competitive market than the utility.

BOMA/Chicago also advocates that the Commission have an active role in these collaborative in these workshops. The presence of Commission Staff will provide additional technical expertise and provide a neutral forum if disagreements occur between parties. BOMA/Chicago advocates that Commission Staff be an active participant in these workshops.

Finally, the reluctance of ComEd and Staff to recognize the importance of customer usage data to customers is baffling. How can any customer with a complex

energy usage profile such as a large commercial or industrial customers be expected to economically control usage without detailed information – preferably on a real-time basis? This process, if anything, shows definitively that an ongoing collaboration is necessary to tap into the many improvements in efficient systems that have surfaced since vertically integrated utilities roamed the state.

As a major stakeholder that will spend tens of millions over the next three years funding this program, BOMA/Chicago sponsored three witnesses in this proceeding to assist the Illinois Commerce Commission with its determinations on the importance of issues from the perspective of ratepayer stakeholders with significant expertise in energy efficiency matters.

II. BOMA/CHICAGO’S STATEMENT OF FACTS

On November 5, 2007, ComEd filed a Petition before the Commission seeking approval of its Energy Efficiency and Demand-Response Plan pursuant to 220 ILCS 5/12-103(f) of the Public Utilities Act.

On December 14, BOMA/Chicago filed their responsive testimony, which included testimony and exhibits from three witnesses: Mr. Ralph Zarumba, Mr. Allan Skodowski and Mr. Vincent Cushing.

The key issues discussed in Mr. Zarumba’s testimony are as follows:

ComEd’s approach to calculating the surcharge allowed in Section 16-103(d) to finance the energy efficiency programs in this proceeding is deficient. The Company’s approach applies the applicable yearly percentage of Customers’ bills (i.e. 0.5%, 1.0% and 1.5%) to the average price for all retail customers as a whole producing a single

factor for all retail customers. This approach results in cross-subsidies and inequities. Mr. Zarumba proposed an alternate allocation which calculates a surcharge specific to each distribution rate class by applying the percentage specified in the legislation to the estimated average revenue per kWh.

Mr. Zarumba's approach better matches the price paid for each customer to the surcharge assessed. Mr. Zarumba's approach does not change the level of revenues collected, nor expose ComEd to any additional economic risk.

Mr. Zarumba also proposes that providing customers with detailed information about their own electric usage should be the first step in any analyses of energy efficiency. As such, ComEd should be required to provide Customers with access and information to their own usage data without additional cost.

In the past few rate case proceedings the Illinois Commerce Commission has abandoned the policy of using marginal costs to determine prices and allocate the revenue requirement. Although the purpose of this proceeding is not to debate pricing allocation principles, Mr. Zarumba reminds the Commission that average cost pricing sends distorted price signals to customers that conflict with the goals of a utility administered energy efficiency program. As such, the Commission should revisit its policies on allocated cost pricing.

Lastly, Mr. Zarumba states that this proceeding is being held on an expedited basis and an exhaustive review of the filing is not possible. Given the accelerated schedule in this proceeding, flexibility should be afforded to all parties to achieve the goals contained in the new law, and collaboration between Customers and the utility should be mandated.

The key issues discussed in Mr. Skodowski's testimony are as follows:

BOMA/Chicago has been a demonstrated leader in the energy efficiency marketplace. As an example, BOMA/International has entered into an education partnership with EPA's ENERGY STAR® to provide building owners and managers with current and developing information regarding energy efficiency. EPA's ENERGY STAR® is a free program for participation. A building simply needs data to participate, and a building's costs to acquire their own usage data from ComEd is too prohibitive.

The Commission should require a formal partnership between ComEd and BOMA/Chicago for the design of energy efficiency programs applicable to commercial buildings in Chicago. The goal is robust ComEd support and advancement of BOMA/Chicago energy efficiency initiatives, and robust ComEd administration of the resulting programs. BOMA/Chicago seeks participation in already existing institutional programs that advance building owners' energy efficiency goals, which enhance the goals contained in the legislation. The best outcome requires that the Commission and ComEd regard BOMA/Chicago as a partner in ongoing program design decisions, not merely as someone from whom to solicit "input".

Participation by BOMA/Chicago members in regional demand response programs can provide significant economic benefits both directly to member participants and indirectly to all Chicago electric consumers. Member buildings have traditionally been active in past ComEd curtailment programs, and many are beginning to utilize the PJM Load Response Program to implement price response. The first customers in ComEd's service territory to participate in PJM's demand response programs were BOMA/Chicago buildings.

The Commission should require ComEd to allow all buildings, not just ComEd program participants, the ability to access building data at no charge. By mandating customer access to their own data supports several agendas, including energy efficiency improvement (both capital and operating), competitive supply pricing and evaluation, and demand response program participation.

The key issues discussed in Mr. Cushing's testimony are as follows:

The Commission should foster, not dictate, nor allow one party to dictate, demand response program participation in Illinois.

A meter/data infrastructure, as proposed by Mr. Skodowski is the most important action and first step that the Commission can take to foster a demand response resource in Northern Illinois. Moreover, interval data access should be liberally and freely provided for use by BOMA/Chicago members and the many energy service companies with whom they do business, for several reasons:

- Competitive demand response industry – the Commission should provide DSR infrastructure and institutional support that invites competing DSR providers into Northern Illinois. DSR competitors have proven their capabilities and their value in several other parts of the country, including other parts of PJM.
- Mitigating Cost of Market Entry for DSR competitors – the best way to make Northern Illinois attractive to DSR providers – and to improve DSR competition – is provide a metering/data infrastructure. An institutional infrastructure removes both an entry cost for DSR providers and a switching cost for their customers.
- Strengthening Demand Response Analysis and Valuation – a metering/data infrastructure enables DSR program designers, policymakers and customers to

anticipate demand response impacts and benefits. Also, demand response program managers and overseers need to be able to reliably measure the net benefits of demand response options to ensure that they are (cost-effectively) providing needed demand reductions.

Requiring adequate meter/data infrastructure is the most important action that the Commission can take to foster a demand response program in Northern Illinois. Moreover, interval data access should be liberally and freely provided to Customers, and the Commission should mandate that ComEd provide Customers their own usage data for evaluation of energy efficiency investments and demand response program participation.

III. FAIRNESS AND LEGALITY MANDATE THAT THE CALCULATION OF THE SURCHARGE BE GROUPED BY CUSTOMER CLASS OR BY A REASONABLE DIVISION OF CUSTOMER GROUPS.

Section 12-103 of the Illinois Public Utilities Act (“PUA”) provides that the utility recover the energy efficiency and demand response charges on a per kWh basis. (220 ILCS 5/12-103(d). For purposes of this section of the PUA, the amount per kWh means the total amount paid for electric service expressed on a per kWh basis. (12-103(a)). “Total amount paid for electric service” is further defined to include without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on taxes. (Id.). Section 12-103(d) provides that “...an electric utility shall reduce the amount of energy efficiency and demand-response measures implemented in any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service...” Clearly, the statute provides that the legislature intended to limit increases to retail customers in connection with collecting a surcharge for energy efficiency.

Furthermore, a utility charged with implementing energy efficiency measures pursuant to this section of the PUA is limited in the amount of surcharge it may collect from a customer by a specific amount. According to Section 12-103(d)(1), the utility can collect no more than 0.5% of the amount paid per kilowatt-hour by those [retail] customers during the year ending May 31, 2007. Similarly, in 2009, the utility cannot collect the greater of 0.5% of the amount paid per kWh by those customers during the year ending May 31, 2008 or 1% of the amount paid per kWh by those customers during the year ending May 31, 2007. (12-103(d)(2)). Finally, in 2010, the utility is limited in the collection of the surcharge from retail customers of an additional 0.5% of the amount paid per kWh by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kWh by those customers during the year ending May 31, 2007. (12-103(d)(3)).

BOMA/Chicago supports the Company's right for cost recovery for prudently incurred costs associated with energy efficiency programs implemented in accordance with 12-103. If these expenses are prudently incurred from reasonable programs such as providing data to customers or custom programs, and are associated with approved measures and programs under this Section, then ComEd should be allowed to recover prudently incurred costs. However, ComEd's proposed approach to recover costs is illegal pursuant to Section 12-103 and inequitable because it ignores that each distribution tariff classification has a different average cost per kWh which the annual percentage should be applied. ComEd's approach of a single per kWh charge (*see* ComEd Ex. 5.0) must be rejected. The proposal made by BOMA/Chicago (*see* BOMA/Chicago Ex. 1.0, 1.3), to charge a per kWh charge for each distribution rate class

is superior in that: (i) such charge is consistent with a plain reading of 12-103, and (ii) such charge equitably applies the surcharge required for cost recovery to all distribution delivery classes on an equal basis.

BOMA/Chicago agrees that the Company is entitled to recover prudently incurred costs associated with these programs but takes no position on the validity of the level of cost recovery requested by the Company (Zarumba Direct, pg. 8). The Company, however, requests that the costs of these programs should be recovered through a single per kWh factor that is applied to all customers at a uniform charge that does not vary by customer/tariff class. (ComEd Ex. 5.0, pg. 2). Given the plain language of 12-103(d), a single uniform surcharge factor proposed by the Company does not conform with such language as ComEd's approach increases Customers costs by percentages greater than provided in such section. The Commission should reject ComEd's proposed surcharge, and accept the approach to calculate multiple surcharges as proposed by BOMA/Chicago in BOMA/Chicago Ex. 1.0, 1.3.

BOMA/Chicago submits that ComEd wrongly interprets Section 12-103(d) by calculating the surcharge based upon the average revenues per kWh paid by all retail customers. The difference between the two interpretations is significant from a customer impact perspective, a policy perspective and a legal perspective.

BOMA/Chicago witness Zarumba presents in BOMA/Chicago Exhibit 1.3 an alternative calculation of the surcharge based upon the estimated average revenue per kWh for each distribution rate class. All information used for this calculation was adopted from information supplied by the Company (Zarumba Direct L.143-4) and no dispute is suggested on any underlying assumptions such as the level of sales, the

procurement costs or the level of the distribution tariffs. The average cost per kWh used to calculate the surcharge by both ComEd Witness Crumrine and BOMA/Chicago Witness Zarumba ranges from a high total cost per kWh of \$0.19844/kWh (Fixture-Included Lighting) to a low of \$0.05128/kWh (high voltage service). Simple math shows that Fixture-Included Lighting customers pay an average revenue of 287% percent higher charge than High Voltage customers. However, the surcharge (proposed for the first year to be 0.5% of average revenue) will be an identical charge of 0.042/cents per kWh for both customers.

BOMA/Witness Zarumba's calculation (BOMA Exhibit 1.3) provides for fifteen (15) different levels of the surcharge – one for each distribution delivery class. Since each class has a different average cost per kWh, the surcharge differs accordingly. Each class surcharge is exactly equal to the percentage stated in 12-103(d) unlike the Company's proposal.

The BOMA/Chicago proposal is more equitable: The Company's proposal provides no matching of the average cost per kWh and the surcharge each customer group pays. This is clearly inequitable. According to Section 9-241 of the Illinois PUA, no public utility shall, as to rates or other charges, grant a preference or advantage or maintain any unreasonable difference as to rates or other charges between classes of service. (220 ILCS 5/9-241).

The Company's proposed surcharge methodology is illegal: The surcharges proposed by the Company for the first year range from 0.072% (High Voltage Customers) to a low of 0.0198% (Fixture-Included Lighting) as percentages of the customer classes of the amount paid per kWh. The Company's approach to calculating

the surcharge is clearly not in keeping with a plain-reading of this legislation which requires, for 2008 for example, of .5% of the amount paid per kWh.

ComEd Witness Crumrine (Crumrine Rebuttal L. 195-7) states that Mr. Zarumba's proposal "... would limit ComEd's expenditures on any class to the dollar value of the applicable cap...". BOMA/Chicago suggests that Mr. Crumrine's interpretation of Mr. Zarumba's testimony is entirely inaccurate. Nowhere in Mr. Zarumba's testimony does he discuss the allocation of program expenditures to any class of service. BOMA/Chicago states unequivocally that in no way is the surcharge proposal sponsored in Mr. Zarumba's testimony tied to the allocation of expenditures to any tariff class, although perhaps it should be. ComEd Witness Crumrine also states (Crumrine Rebuttal L. 192-7) "...such a proposal would reduce the level of revenues of revenues that ComEd will have to expend on the program...". Again, ComEd either misinterprets or misunderstands Mr. Zarumba's testimony. First, Mr. Crumrine offers no explanation of why the change in allocation would reduce the revenues. The average charge to all ComEd retail customers exactly equals the charge in Mr. Crumrine's own testimony. This simple arithmetic fact is demonstrated in Zarumba Exhibit 1.3, Page 3. The BOMA Alternative Surcharge Proposal (shown on the total line) is 0.0461 per KWH. The proposal from ComEd is also 0.0461 per KWH. ComEd appears to attempt to assert that by changing the charge to individual distribution delivery classes, it will change the total, which is, of course incorrect and is analogous to claiming that cutting a pie into different sized pieces will change the size of the pie. Clearly, BOMA/Chicago demonstrated that their proposal equals the same total as the Company's proposal. (BOMA/Chicago Ex. 1.3). Mr. Crumrine's assertion that the BOMA proposal will "...impede the ability to

implement programs” is flatly incorrect, and no basis is provided for his assertion in testimony or otherwise.

Similarly and confusingly, ComEd witness Brandt states that there would be additional personnel and system costs associated in tracking and reporting breaking-out costs by rate class, without specifying what exactly those costs are. (ComEd Ex. 9.0, pg. 10). If there are any additional, as yet unknown costs, it is important to note that ComEd would still receive cost recovery, so it is difficult to understand ComEd’s argument here. First of all, any additional costs were not expanded upon, likely because such costs, if existing, do not rise to the level of round-off error; secondly, ComEd will receive the same revenues and recover the same costs under either scenario, so ComEd’s arguments against a more equitable application of costs is troubling.

Similarly, Staff witness Lazarre opines that a uniform per kWh charge is reasonable based on three factors – (i) that despite the uniform charge will not match costs for all customer groups, a uniform charge reasonably recognizes that expenditures are being made for all major customer groups; (ii) it makes sense to recover program costs on an equal basis across all electricity usage by ComEd customers because the proposed programs will generate benefits for all ComEd’s customers; and (iii) environmental benefits resulting from the ComEd programs will benefit all of ComEd’s ratepayers. (*See* ICC Staff Ex. 3.0). Despite such broad statements regarding the distribution of benefits under the ComEd program, it is clear that Mr. Lazarre never quantified or qualified the amount of benefits customers will be receiving as a result of this process, nor the effect such programs would have on prices or markets, or whether all customers would benefit equally under the ComEd proposal. (TR at 135 - 136).

Therefore, Mr. Lazarre's opinion on the uniform price per kWh proposal should be rejected.

The Illinois Industrial Energy Consumers ("IIEC") produced the testimony of Mr. Robert Stevens. Mr. Stevens testified that the ComEd plan recognizes three customer classes in the energy efficiency measures used to in the program design phase but only customer class encompassing all customers for cost recovery. He proposed that ComEd should recognize three customer classes for cost recovery. A three customer class structure consisting of Residential, Small C&I and Large C&I should be used for cost recovery. The dividing point that he proposed between Small C&I and Large C&I is one megawatt in demand. He notes that it is also consistent with the dividing points used by ComEd.

Mr. Stevens noted that because of the mismatch between the target classes for programs and recovery mechanisms purposed by ComEd customers with one megawatt or more will be required to pay as much as double the cost of programs direct to them. He noted that equity dictates that the recovery mechanism should be designed to recover amounts from the various classes that are commensurate with energy efficiency program costs. He also proposed that there should be flexibility in recovery rates should there be different program costs attributable in the second and subsequent years of the proposed program. The IIEC proposes a cost recovery mechanism where on a year by year basis cost recovery from a class should recover the costs of the programs directed to that class. For example, if a particular class receives 25% of the program costs, that class should be responsible for 25% of the cost recovery.

The IIEC also produced the testimony of Mr. David Stowe. Mr. Stowe testified in more detail about IIEC's cost recovery mechanisms. He stated that the IIEC's plan differs from ComEd's plan in three ways. First, for purposes of identifying energy efficiency program costs, the IIEC recognized three classes of customers: Residential, Small C&I and Large C&I. ComEd's plan only recognizes Residential and C&I. Second, for purposed of recovery of these costs, the cost recovery mechanism offered by IIEC attempts to recover from each class, the cost of the programs associated with that class. Finally, the IIEC cost recovery mechanism recovers the costs of administering the plan.

BOMA/Chicago generally agrees with IIEC's cost recovery mechanism, especially its superior methodology to ComEd's uniform price per kWh proposal. To the extent BOMA/Chicago's requests are denied, BOMA/Chicago supports the IIEC's methodology in relation to this issue.

IV. CUSTOMERS MUST HAVE FREE ACCESS TO THEIR OWN CUSTOMER USAGE DATA

All three of BOMA/Chicago Witnesses, in addition to City of Chicago witness Abolt and others, state that usage data is an effective tool for customers to manage energy usage. Furthermore, BOMA/Chicago Witness Zarumba provided evidence that such information can also provide a mechanism to reduce the emission of Greenhouse Gases (BOMA Exhibit 1.2). In short, BOMA/Chicago requests the Commission order ComEd to provide, at no cost, inquiring Customers with their own interval and ENERGY STAR® usage data.

ComEd witness Brandt (Brandt Rebuttal L.358-62) offers to provide customers participating in the ENERGY STAR® program with data that was formerly only available for a fee. However, this offer is predicated upon the customer participating in the Business Solutions Program (Brandt Rebuttal L. 358-62, L. 374-6)), likely less than one percent of customers seeking this data. No assurances are provided as to the number of customers this program would serve or what restrictions or encumbrances included in exchange for Customers being provided with their own usage data. It is encouraging that ComEd witness Brandt states:

...it is ComEd's intent to provide this data to as many non-residential customers as possible because we believe that one of the first steps to developing an energy efficiency culture is providing customers with a true understanding of how they use their energy. The only cost to the customer will be the cost of interval metering equipment – this cost will still remain with the customer. (ComEd Ex. 9, ll. 364-68).

ComEd, given these statements, should have no problem with the Commission ordering ComEd to provide customers their own interval data, but argues against providing such data in other contexts.

For example, the argument the Company makes against providing data to Customers is that this request has not passed the Total Resource Cost (TRC) Test. Given the proposal for custom programs, the availability of the interval data could have different value based upon each application, the TRC could be run for each requesting customer.

In short, the Company appears to oppose providing customer data in contravention to BOMA/Chicago and the City of Chicago proposals. In contrast, ComEd is requesting cost recovery for Advanced Metering Infrastructure (“AMI”) through Rider SMP in their general rate case (ICC Docket No. 07-0566). The axiomatic reasoning for AMI is to reduce costs through access to better information. This is exactly what BOMA/Chicago is requesting for the same goal.

BOMA/Chicago urges the Commission as a matter of policy to acknowledge that information is critical to controlling Customer costs. Allowing Customers with access to their own information allows for appropriate responses to price signals. Allowing the Company to retain the control of this data to utilize for its own purposes reverts the progress we have made towards deregulation, and turns the industry back towards a de facto monopoly.

V. A COLLABORATE PROCESS NEEDS TO BE MANDATED BY THE COMMISSION

BOMA/Chicago Witness Zarumba’s testimony stated “although BOMA/Chicago acknowledges that an accelerated schedule has been specified by statute, we also suggest that the Commission allow for flexibility to change programs and policies in the future, especially given that the programs implemented will continue for at least three years”. (BOMA/Chicago Ex. 1.0, pg. 2). ComEd witness Brandt has referenced several proposals for a collaborative process to implement these programs (Brandt Rebuttal L. 90-7). A collaborative process, if designed and implemented properly, would

significantly increase the probability that the energy efficiency programs debated in this proceeding will be successful and valuable to customers.

Staff Witness Zuraski states in his direct testimony (Zuraski Direct pp. 25-7) that he does not support the concept of a required “collaborative process” (L. 600-4). He goes on to state that if such a collaborative process is established the following questions need to be answered:

(i) aside from the DCEO, the ICC Staff, and the Attorney General, the Company does not explicitly describe which organizations would be eligible and which would be ineligible to be a part of the collaborative process; (ii) the Company does not specify the degree to which the participants in this collaborative will be “decision makers” or merely advisors to the Company; (iii) to the extent to which participants would be “decision makers,” the Company does not describe how many votes each of the eligible participating stakeholders would be able to cast.

Given that the Company opposes the collaboration idea to begin with, it is not unusual that ComEd didn’t answer these questions. The City and others provided substantive comments on this issue. Clearly, customers that are paying the bills should be necessary stakeholders, but BOMA/Chicago suggests that all interested parties should have the option of participating in this process. Furthermore, BOMA/Chicago strongly suggests that all participants should have decision making authority. If not this collaborative will degenerate into a “gripe session” and have no real meaning. Furthermore, the strength of this decision making will be based upon consensus. No party participating in the collaborative will be giving up their rights to litigate issues

which they feel are not in keeping with the legislative intent or the Commission's interpretation of the law.

Finally, BOMA/Chicago is sympathetic to Staff witness' Zuraski request that Staff remain independent (Zuraski Direct L. 624-30) but feels strongly that Staff must participate in the process, if only to better understand the Customers' point of view before the ICC.

VI. CONCLUSION

The Building Owners and Managers Association of Chicago respectfully requests the Commission Order the following:

1. Reject ComEd's proposal of a "one-size-fits-all" surcharge and implement BOMA/Chicago's proposal to allocate the surcharge by distribution rate class;
2. Order ComEd to provide Customers who inquire, on a timely basis and free of charge, with their own interval meter data and ENERGY STAR® data to promote efficiency and participation in competitive demand response programs, and;
3. Require an on-going collaboration between stakeholders to ensure Illinois becomes a model for implementing substantial energy efficiency programs.

Respectfully submitted,

THE BUILDING OWNERS AND
MANAGERS ASSOCIATION OF
CHICAGO

A handwritten signature in black ink, reading "Michael Munson". The signature is fluid and cursive, with a small dot above the 'i' in "Michael".

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Dated: January 14, 2008